IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1140 OF 1991.

The Union of India
through its General Manager,
Central Railways, Bombay : Appellant.

versus

M/s.Paras Metal Corporation
Bombay. : Respondent.

Mr.A.N.Samant for the appellants.
Mr.R.P.Kadam for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 16th August 2005.

ORAL ORDER

1. Heard learned counsel Mr.Samant for the appellant and learned counsel Mr.Kadam for the respondent. By this appeal the Union of India has challenged the order of the Tribunal awarding compensation to the respondent.

2. Mr.Samant, appearing for the appellant, made only one submission and that is even though the appellant railway has tendered evidence in the form of affidavit, the same was not at all considered by the tribunal. My attention was drawn to para 5 of the judgment which is as under:-

> "Para 5.:- One Shri.Ghisulal Poonamchand, a partner of the Plaintiff firm has been examined as P.W.1. He has also filed an affidavit under Rule 14 of the Railway Claims Tribunal Rules, 1989.
>
> The Evidence of the Applicant was closed on 18th March, 1991. Then the case was posted for Respondent's evidence to 8th April, 1991. No evidence was adduced by the Respondent. It was adjourned for Respondent's evidence to 7th May, 1991. On that date also no evidence was adduced by the Respondent. Hence evidence was closed and case posted for arguments. On the request of Respondent, the case was adjourned twice for arguments. On 26th

> August, 1991, advocate for Applicant gave his arguments. No arguments were given by the Respondent. The case was, therefore, posted for orders to 12th September, 1991. On 13th September 1991 the Respondent have filed an affidavit in their evidence. This affidavit has not been taken into consideration since evidence had been closed long back and the arguments also concluded and the case had been posted for orders."

Mr.Samant contended that this matter, therefore, requires to be remanded to the tribunal.

3. Counsel for the respondent contended that if the appellant did not care to tender their evidence in Court in spite of sufficient opportunity and, tendered their evidence when the case was closed long back, then the tribunal was justified in rejecting the evidence of the appellant/railway.

4. I am not convinced by this submission of the learned counsel for the respondent. If at all the stage of recording of evidence was over

then the tribunal should not have permitted the appellant to tender the affidavit in evidence. If it was permitted and taken on record, the tribunal could have imposed costs. But once the evidence was there, the tribunal was not at all justified in totally neglecting and discarding it. Therefore, the order is required to be set aside. Hence the impugned order of the tribunal is set aside. Matter is remanded to the tribunal. Parties and/or their advocates to appear before the tribunal on 19th September 2005 and, the tribunal will hear the parties on the basis of evidence available on record and decide the case again on merits within six weeks from the date of appearance. No order as to costs.

[D.G.DESHPANDE]